PATENT

REMARKS

Claims 1-53 are pending in the present application. In this amendment, Applicants traverse all rejections; amend claims 1, 42, 43, 50, and 51; and cancel claims 52 and 53.

In the Office Action mailed October 5, 2004, Examiner provisionally rejected claims 1-49 and 51-53 under the judicially created doctrine of obviousness-type double patenting over claims 1 and 42-44 of copending Application No. 09/956,449.

Further, Examiner rejected claims 1-6, 8-28, 33-45, and 47-53 under 35 U.S.C. §102(e) as being anticipated by Ling et al. (U.S. Patent App. No. 2003/0003880), hereinafter referred to as Ling.

Obviousness-Type Double Patenting Rejection

Claims 1-49 and 51-53 are provisionally under the judicially created doctrine of obviousness-type double patenting over claims 1 and 42-44 of copending Application No. 09/956,449. Applicants note that the cited application has issued as U.S. Patent No. 6,771,706 with claims amended from those which the Examiner used to make the rejection. Furthermore, the cited application is the same application as Ling used for the 35 U.S.C. §102(e) rejections. As discussed below in reference to these rejections, Applicants' claims are both novel and nonobvious over Ling.

Applicants concurrently file a terminal disclaimer with traversal in compliance with 37 CFR 1.321(c) to overcome the rejection based on a nonstatutory double patenting ground because the conflicting patent is commonly owned with this application. Applicants are filing a terminal disclaimer without prejudice solely to expedite prosecution and allowance of the present application for patent.

35 USC §102(e) rejections

Claims 1-6, 8-28, 33-45, and 47-53 stand rejected under 35 U.S.C. §102(e) as being anticipated by Ling.

Applicants' claims are novel and patentable over Ling. For example, Applicants' claim 1 recites "selecting one or more terminals for data transmission." Applicants' specification as originally filed discloses that the selecting is performed using a spatial multiplexing multiple-

11

access scheduling scheme (please see paragraphs [1040] through [1051] and [1282] through [1407]). Examiner cites Ling page 5 [0058] as reciting "selecting one or more terminals for data transmission." Ling page 5 [0058], however, recites "selected transmit antennas" which is distinct from "selecting one or more terminals for data transmission" as in Applicants' claim1. Therefore, Applicants' claim 1 is novel and nonobvious over Ling. Furthermore, all of Applicants' claims include this feature and are all therefore patentable over Ling.

In order to expedite prosecution Applicants amend independent claims 1, 42, 43, 50, 51, 52, and 53 to highlight the distinctions discussed above. Specifically, Applicants amend these claims to add the feature that the "selecting is performed using a spatial multiplexing multiple-access scheduling scheme."

Applicants also cancel claims 52 and 53 without prejudice.

<div align="right">PATENT</div>

REQUEST FOR ALLOWANCE

In view of the foregoing, Applicants submits that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

<div align="center">Respectfully submitted,</div>

Dated: February 7, 2005   By: _____

Rupit Patel, Reg. No. 53,441
(858) 651-7435

QUALCOMM Incorporated
5775 Morehouse Drive
San Diego, California 92121
Telephone: (858) 658-5787
Facsimile: (858) 658-2502